

BACK TO BREUER'S CLAIMS ABOUT FUTURE INVESTIGATIONS

Lanny Breuer, he of the potential conflict, has argued that DOJ must keep Dick Cheney's CIA Leak interview secret because, if it doesn't, then senior White House officials may not cooperate with DOJ investigations in the future.

Moreover, if interviews of senior-level White House officials become subject to routine public disclosure, the White House official may agree to talk only in response to a grand jury subpoena in order to obtain the confidentiality protection of Rule 6(e) of the Federal Rules of Criminal Procedure.

And if senior White House officials don't cooperate with DOJ investigations, it may deprive investigators of information about the underlying White House policies tied to alleged crimes.

In any such investigation, it will be important that White House officials be able to provide law enforcement officials with a full account of relevant events. Any such investigation may delve into or require a full accounting of internal White House deliberations or other government operations. Questions may cover, for example, conversations between the President or Vice President and senior advisors, the decision-making process on specific policy matters, advice given to the President or direction provided by the President, and internal discussions relating to White House interactions with other Executive Branch entities and with Congress.

Writing just one week after Breuer's boss, Eric Holder, announced an investigation into torture that may ultimately consider White House deliberations (or at the very least, OVP machinations), I'm sympathetic to Breuer's claimed concern with obtaining such high level cooperation.

But I think nothing undermines Breuer's argument that DOJ's efforts to keep Cheney's CIA Leak case interview secret will enhance cooperation in the future more than Dick Cheney's suggestions that he's not going to cooperate with the torture investigation, regardless of what happens.

WALLACE: If the prosecutor asks to speak to you, will you speak to him?

CHENEY: It will depend on the circumstances and what I think their activities are really involved in. I've been very outspoken in my views on this matter. I've been very forthright publicly in talking about my involvement in these policies.

I'm very proud of what we did in terms of defending the nation for the last eight years successfully. And, you know, it won't take a prosecutor to find out what I think. I've already expressed those views rather forthrightly.

Of course, maybe Fourthbranch said that because Breuer—who as head of Criminal Division may well have some oversight of the torture investigation—has telegraphed that calling someone like Cheney before a grand jury "could risk the perception that the investigation itself was political."

In addition, forcing White House officials to be brought before grand juries could have the effect of injecting the law enforcement investigation itself into the political process, which could intrude upon

government operations at the highest level of government, and which could risk the perception that the investigation itself was political, thus undermining public faith in the impartiality of the judicial system. Baseless, partisan allegations that, easily could be investigated and dismissed through voluntary interviews now may have to be investigated through the specter of the grand jury process.

I have a counter-proposal to Breuer's laughable claim that doing what has long been routine—releasing a high level White House interview—will have different effects than it has always had. And that is this:

If you don't act like the Law, then Cheney's not going to treat you as the Law.

And if you refuse to release Cheney's interview because you want to avoid hurting Cheney's feelings, you're only going to be treated like a chump ... oh, about two days ago.

In any case, Cheney has already proven Breuer's premise to be false: people like Cheney are only going to cooperate if there is a political need or the legal force. And protecting him in this way only serves to dismantle both of those.